United Brotherhood of Carpenters and Joiners of America, Local 62, AFL–CIO *and* Homebase, Inc., a Subsidiary of Waban, Inc. and Chicago Northeast Illinois District Council, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, Party in Interest. Case 13–CD–469

May 28, 1993

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed July 30, 1992, by the Employer, Homebase, Inc., a Subsidiary of Waban, Inc., alleging that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local 62, AFL–CIO, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to the Employer's unrepresented employees. The hearing was held on August 18, 1992, before Hearing Officer Margaret B. Peck. The Employer and Local 62 filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, Homebase, a Delaware corporation, is a subsidiary of Waban, Inc., and a retail distributor of home improvement products with stores in 15 States, including 6 stores in the Chicago area. In the course and conduct of its business operations, the Employer annually purchases and receives materials valued in excess of $50,000 directly from suppliers located outside the State of Illinois. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Carpenters Local 62 and the Chicago Northeast Illinois District Council, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, Party in Interest, are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer is a retail distributor of home improvement products with stores in 15 States, including 6 stores in the Chicago area.

In July 1992, construction work on the Bedford Park Homebase store had been 90–95 percent completed. At the time, steel shelving was being installed in the store by a subcontractor, Henricy Construction Co., and the Employer's employees were laying precut wooden ''stickers,'' 2- by 6-inch wooden planks, between the horizontal beams to form the shelf where either pallets of merchandise or steel baskets of merchandise are set.

Henricy is a signatory employer to the Union's 10-county master agreement. It employs carpenters, laborers, and operating engineers who are covered by union contracts.

On July 27, 1992, Union Steward Richard Laczkowski told Henricy that the work being done in the store by Homebase employees was carpenter's work and that he was going to call the union business agent. On July 28, 1992, Ed Lyons, the Union's business agent, asked three of the Employer's employees if they had a ''carpenters' card.'' He did not ask their pay scale. That same day, the Union sent a ''mailgram'' to the Employer's director of warehouse planning, John Lewis, in Fullerton, California, stating that Lewis had 3 days to prove that the Employer paid ''area standards'' for work being done by the Employer's employees. The Union also disclaimed any interest in obtaining that work or representing the Employer's employees. On July 29, 1992, Union Steward Laczkowski told Henricy that there would be a picket the next day.

On July 30, 1992, the Union picketed the Employer's Bedford Park store. Four picketers wore vests that read, ''AFL–CIO Carpenters informational picket to protest substandard wages against Homebase for carpentry work being done in the building.'' The picketing shut down the job for the day at Homebase and at least one other store under construction at the building complex.

B. *Work in Dispute*

The notice of hearing identified the work in dispute as ''the initial installation of wood stickers at the Homebase, Inc. store at 7200 South Cicero Avenue, Bedford Park, Illinois.'' During the hearing, the Employer moved to expand the scope of the hearing to include future locations within the jurisdiction of the Union in the Chicago metropolitan area. The motion was deferred to the Board. The Employer further moved to expand the scope of the work to include the ''initial installation of wood stickers, baskets, vendor displays and peg hooks.'' This motion was also deferred to the Board. We deny both motions, for the reasons set forth below.

C. *Contentions of the Parties*

The Union contends that the scope of the hearing was wrongfully expanded to include testimony regard-

ing activity at jobsites outside of Bedford Park. The Union argues that it was denied the opportunity to adequately prepare for this testimony. Finally, the Union contends that it had officially disclaimed any interest in the work at the Bedford Park location.

The Employer contends that the Union did make a demand for the work in question, threatened to picket or cause trouble in the event that such work was not awarded to its members, and did, in fact, picket at the Bedford Park store. The Employer further contends that there is sufficient evidence in the record to show that the work in question is retail store work that should be awarded to its unrepresented employees, and that the award should extend to all locations in the Northern Illinois 10-county area of suburban Chicago within the geographic jurisdiction of the Chicago Northeast Illinois District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL–CIO.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that the parties have not agreed to a method for voluntary adjustment of the dispute.

As noted, on July 27, 1992, Union Steward Laczkowski told Henricy that the work being done in the store was carpenters' work and that he was going to call Union Business Agent Lyons. Lyons thereafter asked three of the Employer's employees if they had a carpenters' card. Lyons did not ask their pay scale. That same day the Union sent a mailgram to John Lewis, the Employer's director of warehouse planning, stating that he had 3 days to prove that the Employer paid area standards wages. The mailgram disclaimed any interest in obtaining the work or representing the Employer's employees. Subsequently, on July 29, 1992, Laczkowski told Henricy that there would be a picket the next day. On the next day, July 30, 1992, the Respondent picketed the Employer's Bedford Park store.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. We find that although the Respondent's July 28 mailgram stated that the Respondent was not claiming the work but was only ensuring that the Employer complied with area standards, this disclaimer was not effective because the Respondent subsequently engaged in conduct inconsistent with its disclaimer. Specifically, the Respondent disregarded the 3 days it purported to allow for a reply, and picketed the Bedford Park jobsite on July 30. Although the picket signs stated that the carpenters' were engaging in ''informational picketing to protest substandard wages against Homebase,'' we note that there was no testimony that the Respondent knew the wage rate Homebase was paying and it did not await the Employer's reply to the mailgram before picketing. Thus, we find that there is reasonable cause to believe that one object of the picketing was to obtain the disputed work for employees represented by the Respondent. *Carpenters Local 98-T (Permacrete Products)*, 307 NLRB 401 (1992).

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. We also find that the dispute is not moot merely because the work in dispute has been completed. The parties stipulated, and there is no evidence of an agreed-upon or approved method for the voluntary adjustment of the dispute to which all parties are bound within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 140 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

No union has been certified by the Board as the collective-bargaining representative of the Employer's employees involved here, and the Employer is not a party to any collective-bargaining agreement covering those employees. Accordingly, these factors are not helpful in determining the dispute.

2. Company preference and past practice

The Employer has assigned work of the type in dispute to its employees at 85 stores nationwide. The Employer prefers this assignment because it is a training tool for new employees who gain the necessary familiarity with the operation through the initial setup of the store. This factor favors the assignment to the Employer's employees.

3. Relative skills

There are no special skills involved in the disputed work. This factor favors neither party.

4. Efficiency and economy of operation

As noted, there is testimony that it is more efficient for the Employer to use its own employees because the Employer's employees have done the work before in setting up other new stores. This factor favors an assignment to the employees of the Employer.

Conclusions

After considering all the relevant factors, we conclude that the Employer's unrepresented employees are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's past practice and preference, and the economy and efficiency of operations.

Scope of the Award

The Employer requests that the Board issue a broad award covering all locations in the Northern Illinois 10-county area of suburban Chicago. The Employer argues that there is an ongoing dispute at different locations for different setup jobs and that there is a likelihood of a repetition of illegal activity. Therefore, the Employer requests that the award cover all of Northern Illinois.

The notice of hearing identifies the work in dispute as the ''assignment of the initial installation of wood stickers at the Homebase, Inc. store at 7200 South Cicero Avenue, Bedford Park, Illinois.'' At the hearing, the scope of the hearing was expanded to include alleged events which occurred outside the Bedford Park store location. For the reasons stated below, we find that the broad award requested by the Employer is inappropriate in the circumstances of this case.

Although the scope of the hearing was expanded to include testimony regarding jobsites other than the Bedford Park store, the Union's request for a continuance to prepare its evidence with respect to other jobsites was denied. We find that the hearing officer's denial of the Union's request deprived it of the opportunity to adequately prepare a rebuttal to the testimony which went beyond the scope of the notice of hearing. We deny the motion to expand the nature of the work in dispute for the same reason. Moreover, we note that the Board has not previously determined jurisdictional disputes involving this Employer and this Union. There is thus insufficient evidence indicating a proclivity on the part of the Union to engage in conduct prohibited by Section 8(b)(4)(D). Accordingly, we conclude that the issuance of a broad award is inappropriate in this proceeding. The determination is limited to the controversy that gave rise to this proceeding. See *Electrical Workers IBEW Local 103 (Comm-Tract)*, 289 NLRB 281 (1988).

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Unrepresented employees of Homebase, Inc., a Subsidiary of Waban, Inc. are entitled to perform the initial installation of wood stickers at its Bedford Park, Illinois store.

2. United Brotherhood of Carpenters and Joiners of America, Local 62, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Homebase, Inc., a Subsidiary of Waban, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, United Brotherhood of Carpenters and Joiners of America, Local 62, AFL–CIO, shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.